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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA Commercial Mortgage Company,

Debtor.

Case No. BK-S-06-10725-LBR

Chapter 11

**DECLARATION OF GEOFFREY L.
BERMAN IN SUPPORT OF
OMNIBUS OBJECTION OF USACM
TRUST TO PROOFS OF CLAIM
BASED UPON INVESTMENT IN
THE HFAH CLEAR LAKE, LLC
LOAN**

Hearing Date: September 30, 2011

Hearing Time: 9:30 a.m.

Estimated Time for Hearing: 10 minutes

1. I am an adult person competent to testify in court.

2. I make this declaration based upon my personal knowledge, and upon the records USA Commercial Mortgage Company.

3. I am the Trustee of the USACM Liquidating Trust ("USACM Trust"), which is an entity created by the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization ("Plan"), in the jointly-administered bankruptcy cases, In re USA Commercial Mortgage Company, BK-S-06-10725-LBR, pending in the United States Bankruptcy Court for the District of Nevada.

4. USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding for an acquisition and development loan to a borrower identified as “Homes for America Holding.”¹ A copy of the Offer Sheet is attached hereto as **Exhibit B** and incorporated by this reference. The total loan amount proposed was \$16,050,000. The Offer Sheet described the investment as a “First Trust Deed Investment” and noted that the investment would be secured by a first deed of trust on approximately 11 acres of land in West Palm Beach, Florida. The property was described as including a 180-unit apartment complex, and the Offer Sheet stated that the site had received approvals for 590 new condominiums that would replace the existing apartments, with 199 units already under contract for sale. The Offer Sheet further provided that the loan had a 56% loan to value based on a December 15, 2005 appraisal from CB Richard Ellis.² The Offer Sheet also stated that the loan would be used to acquire the property and provide funds for the pre-development of the excess land for the construction of condominiums.

5. On January 6, 2005, Borrower made and delivered to various lenders, including the Direct Lenders identified in Exhibit A, a “Promissory Note” (the “Note”) and a Loan Agreement. The Note and Loan Agreement provided for a loan of \$14,800,000, with potential future disbursements to the Borrower up to \$16,050,000. The

¹ The loan was ultimately made to HFAH Clear Lake, LLC, an entity owned and controlled by Homes for America Holdings, Inc. USA Investment Partners, and thus Thomas Hantges and Joseph Milanowski, held an interest in Homes for America Holdings. Upon information and belief, that direct interest in the parent company, and thus indirect interest in the Borrower, was not disclosed to the Direct Lenders.

² It appears that the CB Richard Ellis appraisal was not performed until many months after the loan documents were signed, however, the appraisal, with an as-is valuation of \$28,500,000, supports the asserted loan to value calculation. The property securing the HFA Clear Lake Loan had an approximate value as of May 24, 2006 of \$18,700,000 based on a June 1, 2006 appraisal by Hilco Real Estate Appraisal, LLC and an approximately value as of June 5, 2007 of \$14,660,000 based on a July 6, 2007 appraisal by Herron Companies.

1 Note was secured by a Mortgage, Security Agreement, and Assignment of Rents
2 (“Mortgage”) on real property and improvements thereon, as described in the Mortgage,
3 and recorded on January 21, 2005 at Instrument Number 20050040083 in the Official
4 Records of Palm Beach County, Florida, as were subsequent amendments to the
5 Mortgage to secure subsequent advances.

6 6. The Note was also supported by an Unconditional Guaranty executed by
7 Homes for America Holdings, Inc. on January 6, 2005.

8 7. The USACM “Loan Summary” dated July 31, 2006 and filed in this case
9 shows that Borrower was “non-performing” on the Note as of July 31, 2006.

10 8. I declare under penalty of perjury that the foregoing is true and correct.

11 Dated: August 9, 2011

12
13 /s/ Geoffrey L. Berman

14 Geoffrey L. Berman

15 Copy of the foregoing mailed (without
16 Exhibits) by first class postage prepaid
17 U.S. Mail on August 9, 2011 to
18 All investors listed on Exhibit A
Attached.

19 s/ Matt Burns

20 Matt Burns, Paralegal
21 Lewis and Roca LLP
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